

- *Understanding that how your agency and you as the investigator or prosecutor publicly respond to the case can have wide spread ramifications.* If you or your agency respond to an animal abuse complaint in an uncaring manner, unprofessionally, or with lack of action, this can result in a reputation that may follow you for years. In cases involving serious crime, including animal abuse, communities remember how investigators and prosecutors have handled the case. For agencies whose leader is elected (like the Sheriff or the District Attorney), your actions and your agency's response can directly affect their position. Investigators and prosecutors are public servants who are sworn to protect their community. Animals of all species are an integral part of every community. Your response to the abuse of animals should not only be in accordance with the laws of your state and community, but should also be in accordance with your professional and ethical standards.

INVESTIGATING ANIMAL ABUSE

In 2010, the ASPCA conducted a survey of law enforcement professionals that showed that “only 19 percent of law enforcement officers stated they received formal animal cruelty training. Forty-one percent said they are familiar with animal cruelty laws in their jurisdiction, but fewer—30 percent—admitted being familiar with the penalties. The study, taken from a nationwide sample of law enforcement professionals in the U.S., also defines the three major obstacles that law enforcement professionals face in responding to animal abuse cases:

- animal cruelty cases are considered a low priority by leadership;
- law enforcement lacks staff with special knowledge in animal cruelty cases;
- no facilities exist for long-term impoundment of animals kept as evidence.”⁵²

Response to Complaint

It is important to have a professional and courteous response to all complaints of animal abuse. When a caring citizen takes the time to make a report, they should be treated professionally. If the initial facts of the report do not warrant an investigation, it is important to clearly convey why an investigation cannot occur. Explaining the law and its limitations will help to educate the caller. A dismissive or rude response will only infuriate the caller and could subsequently result in animals in harm’s way not being brought to the attention of the investigative agency. If an investigation ensues, it is important to advise the caller of their responsibility as the complainant (will their name be placed into the report, can they report anonymously, will they be interviewed by an investigator, will they need to come to court, etc.). Some people may wish to make an anonymous report out of concern for their safety if the offender is a neighbor. It is important to convey to that individual that an investigation may not help the animal(s) if there are no witnesses for the prosecution. Since animal abuse laws and procedures can be confusing even for investigators and prosecutors, it is important to help citizen callers understand the process. This will make them more cooperative with the process and may result in better evidence for the case.

Early Coordination

When investigators receive a serious complaint or a potential large-scale seizure, work with your prosecutor early on. The prosecutor can assist with search warrants and outlining what evidence is needed to put together a strong case. It is also important to work with animal protection agencies in your community, in your state or nationally. These agencies are experienced in these cases and often have staff that are former investigators and prosecutors. A team approach to a serious situation or large-scale seizure can result in a smoother process and better case in the end. It is helpful to have agreements already in place that allow investigators and prosecutors work together consistently to understand legal issues, changes in the law, and establish procedures on handling cases. The work in advance will save time during the actual progression of a case.

⁵² Summary of survey available at <http://www.aspc.org/Pressroom/press-releases/121510.aspx>.

Search Warrants and Warrantless Seizures

The Fourth Amendment to the United States Constitution ensures that all citizens are protected from unreasonable search and seizure. When animals are being abused and neglected, you must either (1) obtain consent (in writing) from the property owner (which may not necessarily be the owner of the animals) to enter the property for purposes of investigating, or (2) work with your prosecutor to obtain a search warrant approved by a judge. It should always been the goal of any law enforcement agency to acquire evidence of animal abuse via a duly authorized search warrant. Use of a search warrant over the application of an exception to the warrant requirement creates a number of substantial procedural advantages, most notable being that the search and seizure are presumptively valid and the defendant has the burden to prove otherwise.

The exigent circumstance exception to the search warrant requirement may apply to animal abuse situations. There is an evolving body of case law, building on prior case law, that the emergency exception applies to animals. “Although animals may properly be viewed as property in other contexts such as larceny or conversion * * * warrantless intervention may be necessary precisely because animals suffer: they feel pain, cold, hunger and thirst. Computers and televisions do not. The scope of the emergency exception to save the life of an animal may not be co-terminous with the scope of the exception to save a human life, but what is at stake is unquestionably a life.”⁵³

There are two circumstances where a warrant may not be required and will require a case-by-case analysis: “pure emergency” and “probable cause and exigent circumstance”. The “pure emergency” involves a law enforcement officer acting solely to save the life of an animal that is not part of an investigative or law enforcement activity.⁵⁴ This could be a police officer who sees an animal suffering in a hot car, breaks the car window and seizes the animal to save its life. The “probable cause and exigent circumstance” exception states that there is probable cause to believe a crime has been committed and exigent circumstances exist that require immediate action in lieu of securing a search warrant.⁵⁵ Sometimes both exceptions can apply in the same situation.⁵⁶ This situation is being argued in the Massachusetts Supreme Court in the 2013 appeal in *Massachusetts vs. Duncan*. So in the example above, although the officer intervenes solely to save the animal, inherent in the situation is probable cause that a criminal offense has occurred. At this time there appears to be no distinction in the animal context between what constitutes exigent circumstances for purposes of probable cause, and exigent circumstances exception. The *Duncan* decision may help to clarify this issue.

53 Brief for Animal Legal Defense Fund, Animal Rescue League of Boston, National District Attorneys Association, and Association of Prosecuting Attorneys at 21-22, as Amici Curiae Supporting Plaintiff/Appellant, *Commonwealth of Massachusetts v. Duncan*, SJC-11373 (Supreme Judicial Court for the Commonwealth of Massachusetts).

54 See in general, *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Tuck v. United States*, 477 A.2d 1115, 1120 (D.C. 1984).

55 *State v. Stone*, 92 P.3d 1178, 1183-84 (Mont. 2004); *Davis v. State*, 907 N.E.2d 1043, 1050 (Ind. Ct. App. 2009); *People v. Rogers*, 708 N.Y.S.2d 795, 797 (N.Y. App. Div. 2000); *State v. Bauer*, 379 N.W.2d 895, 899 (Wisc. Ct. App. 1985), rev. denied, 388 N.W.2d 185 (Wis. 1986); *Hegarty v. Addison Cnty. Humane Soc’y*, 848 A.2d 1139, 1142-45 (Vt. 2004); *Brinkley v. Cnty. of Flagler*, 769 So.2d 468, 471-72 (Fla. Dist. Ct. App. 2000); *Morgan v. State*, 645 S.E.2d 745, 747, 749-50 (Ga. Ct. App. 2007); *People v. Thornton*, 676 N.E.2d 1024, 1028 (Ill. App. Ct. 1997); *State v. Berry*, 92 S.W.3d 823, 830 (Mo. Ct. App. 2003); *Pine v. State*, 889 S.W.2d 625, 632 (Tex. Ct. App. 1994).

56 *Massachusetts v. Ortiz*, 435 Mass. 569 (2002).

The burden is on the prosecution to show that an objective and reasonable person would have concluded that the life of the animal was in peril. Amici Curiae parties in the *Duncan* case outlined these factors to look at when determining whether the warrantless seizure of the animal was reasonable:

- The condition of the animal was caused by a human in violation of anti-cruelty laws;
- The species of the animal (i.e., a dog dying on the end of a chain in a backyard without sufficient shelter, food and water is different than a worm on a hot backyard patio);
- Whether the animal is located inside of the home (where more privacy exists) or outside of the home;
- A combination of evidence to demonstrate that the animal is in peril (i.e., a dog chained in the backyard combined with the dog showing no movement);
- Whether property damage will occur in order to save the animal (the less damage, the lesser scrutiny should be applied to the warrantless seizure);
- Is there time to seek a warrant or is the animal in immediate peril of death or serious injury; and
- Were reasonable efforts made to contact the owner to obtain consent to help the animal.

While the *Duncan* court has not ruled on this case as of the publishing of this guidebook, the arguments proposed to the court are instructive for how investigators and prosecutors should argue that a warrantless seizure of an animal in peril was required. The outcome in *Duncan* notwithstanding, there is compelling authority from several states supporting the warrantless rescue of suffering animals in cases of exigency. See, *People v. Chung*, 110 Cal. Rptr. 3d 253, 258 n.8 (Cal. Ct. App. 2010), rev. denied, 250 P.3d 179 (Cal. 2011).

Gathering evidence

Treat each animal abuse case like a homicide because you will not have a victim to testify. Therefore, gathering evidence in a manner like a homicide case is crucial to your success. It is often stated that investigations and preparing cases for prosecution are limited by time constraints and burdensome caseloads. However, when you invest time into investigating and preparing a case for trial you should do so with the attitude to leave *no stone unturned*. This is important not only as part of your oath to enforce the laws of your state and jurisdiction, but is important so that you are not unnecessarily caught off guard by defense counsel who may dedicate time and resources to mounting a strong defense. Being ill prepared with evidence and presenting an inadequately documented case at trial may result in a not guilty verdict, a waste of taxpayer money and time, and set free an animal abuser. Therefore, it is important to properly gather evidence in all cases, no matter how slight or significant.

Dependent on the circumstances, a typical investigation should involve:

- Photographing and/or videotaping the entire crime scene
- Location (inside and outside)
- All animals as they were found
- People in the vicinity
- Detailed photographs and/or video footage of the animal victim(s) showing injuries, physical, and behavioral conditions (each animal should be handled individually)

Continued

- Calling for animal crime scene processing
- Calling for a veterinarian (preferably a forensic veterinarian) to come to the scene during evidence collection
- Seizing appropriate items at the scene, including the deceased bodies of animal victims and buried or burned animal remains
- Documenting food and water bowls (or lack thereof)
- Documenting housing conditions (e.g., if processing a hoarding scene, place a white towel at the home's entrance and then collect and bag it afterwards so that the filth can be shown to the jury)
- Interviews
- Always attempt to interview the suspect and obtain a tape recorded or written statement as soon as possible
- Interview other residents, eye witnesses and the reporting witness at the crime scene and lock in statements early
- Interview any veterinarian who has had contact with the animal victim(s) and obtain records (or document lack of records and veterinary care)
- Documenting animal condition while in care
- If an animal is seized with injuries or emaciated, document the animal's improvement over time to defeat anticipated defenses. Sample forms for documentation of the condition of animals seized in cruelty cases are available at ASPCAPro.org.

A prosecutor's case is only as good as the investigator's work. If items are left behind or additional information is needed, go back and seek the evidence. As with many crimes, animal abuse cases are frequently based largely on circumstantial evidence. While some prosecutors will not pursue a circumstantial evidence case, those cases go forward every day across this country and many result in a guilty verdict or plea. Do not shy away from a circumstantial case. Sometimes a circumstantial case is better than an eyewitness case. While judges may dislike taking up valuable court and trial docket time with a circumstantial evidence case, your job as a prosecutor and investigator is to enforce the laws, and the judge's job is to ensure fairness in the proceedings.

Seizure and Holding of Animal Victims

Animal abuse cases differ from all other prosecutions in that the primary "evidence" in the case is often a living creature that must be housed, fed and cared for—sometimes for long periods. All states have provisions within their animal abuse laws providing for the seizure of animals being cruelly treated or neglected.⁵⁷ In some states, humane agents may remove *neglected* animals, but only a law enforcement officer may remove *abused* animals. Some states require that a veterinarian be consulted to determine if seizure is in the best interests of the animals. Such input is desirable even when not specifically required by law. Such seizures can place an enormous burden on the responding agencies.

An animal hoarding situation, "puppy mill" or animal fighting investigation may involve dozens to hundreds of animals needing immediate and long-term care. Fighting dogs and roosters can require special housing for

⁵⁷ See, Bernstein, *supra*, at 10686-10689.

the protection of the animals. Cases may also involve exotic animals or wildlife with special dietary, housing and veterinary needs. The special requirements for animal care in animal abuse cases demand that these cases be moved as quickly as possible through the system. Prolonging proceedings is problematic for all concerned. The animals can suffer additional stress, disease or harm from improper or prolonged confinement.

In some cases, animals cannot receive needed medical treatment without the owner's consent or willingness to surrender ownership, which may be withheld. Any jurisdiction that follows such a rule has basically codified neglect and the vigilant prosecutor confronting this issue should immediately file a motion with the trial court to secure an order authorizing necessary care. The responding agency can accumulate huge costs in providing long-term housing and care for animals that are likely to be returned, adopted or euthanized at the conclusion of proceedings. Several options may be available to minimize some of the costs and delays associated with prosecuting an animal abuse case:

Release of Animals for Placement (Evidence Holds and Pre-Conviction Transfers of Ownership)

In cases where the victim animals are owned by the defendant, investigators and prosecutors should work to obtain defendant's relinquishment of the seized animals for eventual adoption, placement or humane euthanasia of those who are deemed untreatably ill and suffering or too dangerous after behavior assessment. Prosecutors must be cognizant that the community will be monitoring the disposition of the abused and neglected animals. Summarily euthanizing animals that otherwise are adoptable or appropriate for some form of safe placement can negatively impact the selection of a fair jury. Citizens and potential jurors will criticize seizing animals from abusive environments when the end result of the government is to euthanize them. Therefore it is important for prosecutors and investigators to work with animal protection partners to provide behavioral assessments, rehabilitation and put forth efforts to place the animals. It is also important to do this while the case is pending, if allowed under state law, so that the animals do not languish in a shelter setting.

Managing the relationships between law enforcement, the shelter(s) and foster care providers is absolutely key; express written agreements need to be in place that clearly define roles and avoid disputes later in the life of the case. Further, it is important to understand the substantial difference between an evidence hold that prevents the return of seized animals and other quasi-civil possessory issues related to transferring ownership (e.g., liens, costs of care bonding and forfeiture proceedings). It is often the case that the prosecutor can waive the evidence hold on the surviving animals, but the seizing agency will have a legal right to retain possession to secure clean title to the victim animals who can then be placed in new, caring homes.

Voluntary Surrender

Owners of animals should be asked to voluntarily surrender ownership of the animals to an animal control or humane organization either in the best interest of the animals or as part of an initial plea agreement. To avoid future complaints that this surrender was granted under duress, this usually should not be done in the emotional environment of the initial seizure or arrest and should be arranged with the participation of defendant's counsel. Voluntary surrender offers the best opportunity for meeting the immediate needs of the animals without compromising their value as evidence in the prosecution.

Declaration of Animals as Abandoned

In cases where animals have been left without proper care and the owner is not in residence, many states allow for the consideration of such animals as abandoned and subject to immediate seizure by appropriate humane, animal control or agricultural authorities. Animals whose owners do not appear at hearings scheduled to determine disposition may also be considered abandoned in many states. Also, if a defendant asserts the defense that the animals are not his/hers, have that formally declared in court or in writing, and unless additional ownership information is available, proceed to forfeit the animals as abandoned.

Impound on Premises

When an animal abuse case involves a large number of animals for which there is no suitable site to hold them, it may be appropriate to arrange for an impound on the defendant's premises with provisions for local authorities to provide for feeding, care and medical attention. If animals are to be held in this way, it is important to carefully document each individual animal and, when feasible, to require that each animal be provided with permanent identification (e.g. microchip) to prevent the removal or replacement of seized animals. In the case of animals of high value or at high risk for theft (e.g. fighting dogs), it may be necessary to have full-time law enforcement presence at the scene until the court allows another disposition.

Bonding/Cost of Care Provisions

When animals are not immediately surrendered and local authorities must provide care to maintain them until final disposition, if allowed by law, request the court to require defendants to post a bond or security that is intended to compensate agencies providing care and to prevent the adoption or euthanasia of the animal while the case is being prosecuted. Most states have provisions that either require or allow for such a procedure within their cruelty laws. For those that do not, there is still the option of seeking a court order requiring such a bond in the interests of both the owner and the caretakers of the animals. Usually such bonds are based on a reasonable cost of care per animal per day, payable in advance on a month-by-month basis with failure to comply resulting in forfeiture of the animals. Some states consider costs of care and treatment as a lien on the animal(s) that have been seized, however it is often very difficult for agencies to recover these costs after the disposition of the case.

Lien Perfection and Foreclosure

Several state statutes expressly create a possessory chattel lien to secure the costs of caring for victim animals (e.g., Or. Rev. Stat. §87.159). These liens are subject enforcement and collection via foreclosure and the diligent prosecutor will fully investigate state law to assess the viability of this remedy in their state.

Quantum Meruit/Implied Contract/Unjust Enrichment

As a fallback position, the seizing agency may have a viable civil claim against the defendant/owner of victim animals for unjust enrichment on the following theory: the defendant has a statutory duty to provide minimum care for the victim animals, the defendant has failed to fulfill that duty resulting

in seizure of the victim animals by law enforcement, and the seizing law enforcement agency is required to provide minimum care for the animals still owned by the defendant and that results in the defendant being unjustly enriched. ALDF has successfully litigated a number of these lawsuits and will provide free assistance with such a case.

Disposition of Deceased Animals

Animals that are believed to have died as a result of abuse should be handled with as much care as other evidence of a crime. Most animal abuse investigators are trained to thoroughly document and photograph the condition of any live animal and animal remains found at a suspected crime scene. Whenever possible, animals should then be removed to an appropriate laboratory or veterinary facility for forensic necropsy (postmortem examination) by a veterinary pathologist. It may be necessary to conduct large animal necropsies in the field, with samples taken for more detailed clinical analysis in the laboratory. In cases involving many dead animals, it may not be necessary to perform detailed necropsies on all animals, but the remains of each animal should be documented and photographed and representative samples should be removed for more detailed analysis. Some veterinarians or animal control officers may feel that remains are too decomposed to be of forensic value, but even skeletal remains can be significant in proving starvation, poisoning, abuse or inhumane killing.

PREPARING THE ANIMAL ABUSE CASE FOR PROSECUTION

Charging Decisions

As mentioned previously, animal abuse often occurs alongside a variety of other serious property and interpersonal crimes. It is important to bring all charges together in one complaint so that the trier of fact has a full picture of the circumstances. It is also important to charge a separate count for each animal that is proven victimized. When reviewing a request for charges, do not hesitate to send the case back to the investigator to request additional information and evidence to support the issuance of all charges, including animal abuse. Other issues a prosecutor must evaluate include specifically identifying each animal as a separate victim; charging conduct as part of separate criminal episodes to avoid merger issues and with an eye toward both preventing expungement and securing consecutive sentences.

Most laws do not limit the application of animal abuse laws to incidents involving valuable or even owned animals. A brutal act against a stray cat or a wild duck at a public pond may be just as prosecutable as the torture of a neighbor's pet dog. To understand why it is important to charge and prosecute cases involving un-owned animals, see NCPAA's *Tales of Justice* newsletter entitled "*The Hierarchy of Anti-Cruelty Laws: Prosecuting the Abuse of Stray and Feral Cats*." ⁵⁸

The evidence for animal abuse may be more definitive than that for other crimes and successful prosecution of those charges may carry the same or greater consequences than other potential charges. For example, where the more serious crime involves a recanting victim of physical abuse, the co-occurring animal abuse charge may be the only viable pathway to conviction. In some cases, a plea to animal abuse of any degree and a disposition may be the most realistic option to protect the abused animal, human victim and the public. In cases of juvenile offenders, conviction for an animal abuse offense that co-occurs with other offenses may offer the prospect for a long-term period of probation that will allow the best opportunity for monitoring the offender's progress.

Charging Enhancements

Most state animal abuse laws reserve felony-level charges to dogfighting, cockfighting and "aggravated" cases that involve intentionally, knowingly or maliciously torturing, tormenting, beating or cruelly neglecting an animal. However, other considerations may elevate the level of the offense, such as prior offenses or acts done to threaten or intimidate others, including cruelty committed in the presence of a child. Be sure that you are aware of the most recent provisions of the laws in your jurisdiction, since the definitions of those acts covered by the felony provisions are frequently revised. Too commonly overlooked are issues with the use of a firearm or a dangerous weapon. These generic enhancements are commonly applicable in animal abuse cases as well. For example, in Oregon, if an offender uses a firearm to kill his neighbor's dog in an act of aggravated animal abuse, Or. Rev. Stat. §161.610 calls for a five-year minimum prison sentence.

⁵⁸ Allie Phillips, *The Hierarchy of Anti-Cruelty Laws: Prosecuting the Abuse of Stray and Feral Cats*, in *TALES OF JUSTICE* 3(3) (2013), available at http://www.ndaa.org/animal_abuse_newsletter_mailinglist.html.

Some prosecutors may be inclined to undercharge perpetrators of animal cruelty, thinking that the acts involved may not meet a statutory definition such as torture. However, veterinarians and other expert witnesses may provide testimony that certain acts, such as intentionally starving or drowning an animal, can cause slow and painful death and thus could meet the definition of torture required for a felony charge. Prosecutors may also feel that the facts of the case may not meet a standard that requires a degree of intent to cause harm, but often it can be demonstrated that the suffering and harm to the animal was the result of willful behavior with clearly foreseeable consequences for the animal, such as abandoning a chained animal in a remote location. It is not unusual for a court to apply concepts from laws written more than a century ago, sometimes using standards such as willful or wanton killing that have been replaced by broader concepts such as *needlessly* killing. Judges may not be aware of current precedent and may rely on outdated cases and interpretations, so you should clarify the most recent standards for all triers of fact.

Community outrage at an egregious act of animal cruelty may generate calls for charges that are not justified by the facts of the case or the provisions of existing laws. As addressed in a later section, it is important to charge according to the facts presented. At the same time, it is important to make a special effort to educate responding officers and the public to what is needed to prove the case, and to the limitations of the applicable laws. In some cases it may be possible to legitimately apply non-animal abuse laws that could carry more serious consequences. For example, several cases of animals set on fire have been charged as felony arson in states with only misdemeanor animal abuse laws available at the time. Knowing the violence and psychopathology behind some extreme acts of animal cruelty, and that many laws carry low penalties, it is important consider all appropriate charges that can be brought to serve justice and ensure that the offender, if found guilty, receives the appropriate level of punishment to fit the crime.

Federal Charges

It was previously noted that the federal Animal Welfare Act specifically addresses interstate activities involving dogfighting and cockfighting, but that state laws usually carry significantly greater penalties. Some animal abuse cases may involve actions that violate other federal laws including the Humane Slaughter Act, the Endangered Species Act, the Wild Bird Conservation Act, the Bald and Golden Eagle Protection Act, the Marine Mammal Protection Act and the Wild Horses and Burros Act. Some animal poisoning cases may include violations of the Federal Insecticide, Fungicide, and Rodenticide Act. Cases that could involve the application of federal charges are likely to also include state animal abuse violations and may require close coordination of actions with federal prosecutors. The crush video industry is also subject federal jurisdiction under 18 USC §48.

There has also been a surge of videos/photographs uploaded to and promoted on the Internet and social media sites (such as YouTube and Facebook) that depict individuals harming animals. These cases can be difficult to investigate and prosecute due to the online nature of the crimes and will most often require a report to federal authorities, such as the Federal Bureau of Investigations and the National White Collar Crime Center.

When you are responsible for investigating and prosecuting animal abuse cases, it is important to identify and collaborate with federal agencies because of the invariable cross-over of some animal abuse crimes.

Which Victims to Charge?

Many cases of animal abuse involve multiple animal victims, particularly cases of severe neglect or organized activity such as dogfighting. Some prosecutors may choose to base charges only on the most egregious and easily proven instances of abuse. In some cases multiple counts may be filed using each instance of abuse as a distinct offense. In other cases, the existence of multiple victims alone may elevate the level of the offense. *Oregon v. Nix*, 251 Or. App. 449, 283 P.3d 442 (2012) addressed whether individual animals are “victims” for purposes of charging and conviction. The court held that merging all animal victims into one count for sentencing, contrary to convictions on individual counts related to each animal, was error and each animal victim could be listed in separate counts. The Ohio Court of Appeals reached a similar conclusion in *State v. Helmbright*, 2013 Ohio 1143.

In recent years, states have begun to pass laws that enhance the penalty based on the number of victims. For example, Michigan amended Mich. Comp. Law §750.50, its neglect law, in 2008 to assess different maximum penalties based on the number of animals involved. For example, the base penalty is a 93-day misdemeanor if one animal was involved, a one-year misdemeanor if two–three animals were involved, a two-year felony if four–ten animals were involved (or there is a prior conviction), and if the incident involved 10 or more animals (or there are two or more prior convictions), the penalty increases to four years.

If multiple animals are involved and the defendant has not voluntarily surrendered all of the animals that have been affected, failure to charge on each animal may result in having many animals left with or returned to the defendant. When animals are seized pursuant to a search warrant, the warrant should explicitly cover animals “born or unborn” to include animals that are born to pregnant animals being held following the seizure. As part of a plea agreement, it is important to require the defendant to surrender custody of all animals (whether contained in a charge or not). If a plea agreement cannot be reached, it is important to include all of the affected animals in the charges so that upon conviction none of the animals will be left out and returned to the defendant.

It is also important to document the presence of healthy and well-cared-for animals found at the scene of an animal abuse case. Although such animals are likely to not be seized as evidence or to be returned following medical assessment, their presence at the scene does not undermine charges of abuse. To the contrary, the fact that a suspect has some animals receiving adequate care establishes their knowledge of what is required to keep animals healthy and supports the argument that the poor condition of other animals at the scene is the result of willful actions.

Building the Case

Even though animals are deemed property in all states, a successful animal abuse prosecution often parallels an interpersonal violence or sexual assault case more closely than a prosecution for a property crime. Figure 9 provides a general checklist for developing an animal abuse prosecution. Since animal abuse laws are evolving rapidly, it is important to review the most recent versions of the statutes for updates. In some cases, other relevant statutes may be found outside of the criminal code, such as in agriculture and market laws, fish and wildlife regulations, or public health codes.

The primary evidence for the prosecution of most animal abuse cases will be the records and evidence compiled by investigators involved in the initial response to the complaint and medical documentation of the condition of any animals (alive or dead) found at the scene. Humane investigators are increasingly receiving good training on appropriate investigative techniques. These reports should include thorough documentation of the complaint, photographic and/or video documentation of the conditions found, inventories of other relevant evidence that may have been seized, reports of any eyewitness testimony and other relevant case data such as weather information in cases of extreme neglect or exposure.

Figure 9

Sample Workup Checklist for an Animal Abuse Prosecution

- Review state animal abuse laws and related regulations for recent changes that may apply
- Assess whether federal laws have been violated
- Investigate complaint circumstances
- Investigate the possible existence of similar acts or transactions which may be admissible under Rules of Evidence (Rule 404(b))
- Interview responding officer(s) and humane agent(s)
- Was the animal owner interviewed? If not, ask investigators to seek consent to an interview.
- Review photos/videos of scene and animal(s)
- Inspect physical evidence if applicable (e.g. dogfight paraphernalia)
- Visit scene if applicable (particularly recommended in cases involving many animals)
- Meet the animal survivors
- Review medical records/necropsy reports of victims (including photos)
- Review short and long-term options for housing animals in case
- Meet with veterinary and other expert witnesses
- Meet with lay and eye witnesses
- Determine what additional evidence or documentation is needed
- Review treatment and other service options that may be applicable for offender

Meet your Animal Victim

Meeting the animal survivors is something that is not frequently done in an animal abuse case. However, animal abuse cases should be prepared just like other victim-based cases. Would you prepare for and go to trial without meeting your child victim? Of course not. While you may initially hesitate meeting your animal victim (particularly if they are housed at an animal shelter and you are unfamiliar with an animal shelter setting), once you meet your animal victim(s), it will give you a new (or renewed) vigor in pursuing your case. On her first animal abuse case, one of the co-authors met with her animal victim at the shelter. Although she had previously adopted from this shelter, she had never been into the isolation ward where animal victims were kept. Not only did this visit increase her dedication to obtain a guilty verdict so that the animal victim could be surrendered and rehomed, but it also resulted in her volunteering at the shelter and co-founding a nonprofit at the shelter to help care for and rehome homeless, abused and neglected animals. You should never go to trial without meeting your animal victim survivors.

Pre-Trial Motions

Depending on the facts of your case and the charges brought, there are a number of pre-trial motions that can and should be brought. Some of the motions to consider are:

- **Possession ban as a condition of release/bond**= Know your specific state law on setting the terms of the defendant's release/bond. Most state laws can readily be construed to support the state's motion to set a pre-trial condition of release preventing the defendant from owning, possessing, harboring or caring for an animal(s) while the criminal case is pending.
- **Motion to post bond for cost of care** = Defendants will often try to avoid responsibility for the abuse of an animal by claiming that it was not theirs. You can reveal this defense early on by filing a motion requiring the defendant to post a bond for the cost of care of the animals and if the defendant denies ownership, then ask the court to deem the animals as abandoned which will then allow your housing shelter agency to release them for adoption or placement.
- **Motion for forfeiture of the seized animals** = All states have forfeiture laws addressing seized animals.⁵⁹ While most states place the procedures for forfeiting a seized animal within the civil code of procedure, this is an important motion for the prosecution to file. Your specific state statute will tell you the earliest date that you can file this motion. It is falsely believed among investigators and prosecutors that seized animals are evidence and cannot be forfeited and re-homed/placed until the conclusion of the case. Unless your state law specifically says that, this notion is untrue. Animals are live evidence and the evidence that they contain will begin to heal and disappear as soon as they are in a safe and healthy location. Therefore, holding seized animals for months and often years until the conclusion of a case is, on its own, a cruel practice for the animals and over-burdensome to the shelters that care for the animals. So it is essential that you understand all aspects of your state forfeiture law and seek to forfeit the animals on the first day allowed by law. Also remember to include surrender of all seized animals, and those born and unborn from the seized animal, during plea negotiations.
- **Crawford-type motion** = You may need to file this motion, based on the Crawford v. Washington case, to admit statements and/or documents from any unavailable or non-testifying witnesses (such as an out-of-state DNA analysis expert).
- **Motion to introduce photographs and videotapes of the crime scene and animal victims**= Defense attorneys will likely object strenuously to showing photographs and videotapes of the crime scene and/or animal victims because they may inflame the jury against the defendant. Be prepared to file a pre-trial motion to admit all photos and videotapes as *res gestae* evidence of the crime charged. If the judge seems inclined to exclude any essential photos or videos, one option that can be offered is to place a black patch over the eyes and/or face of the animal(s) (unless the eyes and/or face are injured as part of the offense). Doing this may help in making the photos "less inflammatory."
- **Notice of Intent to Introduce Evidence of Other Acts and Transactions under Rule of Evidence 404(b)** = This motion can be filed to prove absence of mistake, intent, motive and related "rule 404b" matters. Investigators need to gather the defendant's past history of abusive acts and prosecutors should review those incidents and, if warranted, file a pre-trial motion to secure a ruling as to the admissibility of the defendant's prior misconduct. Failure to raise the issue pre-trial commonly results in the state having no appeal option should the court commit error during the trial.

⁵⁹ See footnote 57.

Pet Protective Orders

As of 2013, twenty-two states and Puerto Rico⁶⁰ have passed “pet protective order” laws that now include pets on domestic violence protection orders. You should determine during the investigation of the case as to whether the animal victim was protected under a court order. Asking the non-offending owner or checking court records will help to uncover this potential evidence. Evidence of a pet protective order could be instrumental to your case, especially if it involves family violence that included animal abuse, because it will demonstrate prior threats or harm to the animal victim or other animals that could bolster certain elements of the crime(s) charged.

⁶⁰ Arizona, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, North Carolina, Oklahoma, Oregon, Puerto Rico Tennessee, Texas, Vermont, Washington, and West Virginia.

PLEA AGREEMENTS

When discussing a resolution to a case with a guilty plea, there are six critical considerations to keep in mind:

- (1) do not agree to a *nolo contendere* (no contest) plea to any charge involving animal abuse;
- (2) do not summarily reduce or dismiss animal abuse charges in lieu of a guilty plea to a more serious non-animal charge (unless there is no other option);
- (3) do not agree to community service with animals;
- (4) do not allow the defendant to own or possess any animals, especially returning those animals suspected of being abused or in harm's way;
- (5) do request a psychological evaluation and appropriate court-ordered treatment; and
- (6) do document and prove the costs of care that all parties have incurred during the pendency of the case, making sure to differentiate between statutorily authorized costs of care in animal abuse cases and traditional "restitution."

First, as will be discussed further on, getting an animal abuser the appropriate therapeutic treatment is essential to reducing recidivism and keeping communities safe. Treatment is only as successful as the offender who can admit his/her conduct in harming the animal(s). Therefore, a no contest plea allows a defendant to continue their denial in their conduct and will frustrate any therapeutic intervention from being successful. A no contest plea is only good for getting a conviction on the defendant's record and nothing else. So avoid no contest pleas at all costs.

Second, animal abuse charges should not be reduced or dismissed as part of a plea agreement, absent serious evidentiary issues. A guilty plea to any animal abuse charge can trigger special statutory sanctions, enhanced future penalties, and requirements from the court during probation, including specialized animal abuse treatment, ban on possessing animals, etc. For example, if your case involves the sexual abuse of a child in addition to killing the family cat in order to gain silence and compliance from the child victim, obviously the sexual abuse charge will carry a larger penalty upon conviction. Do not be quick to dismiss the animal abuse charge because doing so will strip that information from the defendant's record (thus leaving future prosecutors in the dark about the animal abuse) and will prevent the court from ordering treatment for the animal abuse (which is likely to have different provisions than the treatment for sexually abusing a young child).

Third, do not ever recommend or agree to a defendant performing community service at an animal shelter or around animals. Some jurisdictions allow jail inmates to work off their jail housing fees and/or community service requirements in an animal shelter. This may be acceptable for someone convicted of petty theft; but is not appropriate for anyone convicted of an assaultive crime, especially against animals. Remember, you would not place a pedophile at a day-care center or a rapist at a rape counseling center; likewise, animal abusers should not be near animals unsupervised.

Fourth, do not agree to return abused animals to a defendant who pleads guilty to animal abuse unless the facts involve some forms of acute neglect and the situation involved an uneducated or financially challenged defendant, rather than a defendant who acted with cruel intention. In fact, several states, by operation of law, provide that a convicted animal abuser is precluded from possessing animals (e.g., ORS 167.332 and Cal. Pen. Code § 597.9). For example, many believe that animal hoarders should have all of their animals removed from their care. Some are reluctant to remove all animals from a hoarder. Allowing a small number of spayed/neutered pets to remain provides strong justification for routine monitoring and reasonable unannounced inspections to check on these animals and look for evidence that any additional animals have been acquired in violation of court orders. When a hoarding defendant understands that his/her ability to have one or two of their favorite pets returned is conditioned upon accumulating no additional animals and providing appropriate care, it gives the defendant an incentive in complying with the terms of probation. However, for cases that involve facts of intentional cruelty, the prosecutor should make the plea agreement contingent upon the surrender of all animals in the defendant's care (regardless of whether only some were abused), including born and unborn animals, and placing an additional condition that the defendant not own, possess or be near animals for the term of probation. If your state does not have a law in this regard, you can still require it in the plea agreement. For a listing of state laws on the banishment of pet ownership, check out the Pet-Abuse.com website.⁶¹

Fifth, do require that the defendant undergo a court-ordered psychological evaluation *prior* to entering a guilty plea. The findings from the evaluation may change how you negotiate a plea for a defendant. Then ensure that the court orders the appropriate treatment. The psychological evaluation should be tailored to the facts of your case. For example, your case may be motivated by domestic violence, or it may be sexual in nature.

Sixth, get an express agreement on the defendant's willingness and ability to pay for costs of care. Do not fall into the "restitution" trap where the court may only have authority to award "restitution" for the criminal counts admitted to as part of the plea (or proven at trial).

Plea negotiations happen on most cases due to the sheer number of cases and limited court time. Be smart in negotiating the animal abuse case, or cases where animal abuse co-occurs with other charges. If you summarily dismiss the animal abuse charge(s), you will be missing an opportunity to get the defendant the appropriate treatment to prevent future violence. And always bear in mind that in some cases a lengthy term of incarceration is the appropriate sanction.

61 Available at http://www.pet-abuse.com/pages/cruelty_laws.php.

TAKING THE ANIMAL ABUSE CASE TO TRIAL

Mind Set

Taking an animal abuse case to trial can be difficult because of the overwhelming helplessness of animal victims at the hands of humans and the emotions that it may cause. It is important to fix your mind set on being the best possible prosecutor for each animal victim. Every prosecutor took an oath to uphold the laws of their jurisdiction. Some prosecutors may believe that they do not have the time or resources available to properly prepare an animal abuse case for trial; some may not like animals. These are excuses and could be an ethical violation of your oath. Legal, strategic and forensic assistance in case preparation is available from several organizations listed in the Resources section of this guide, including the NDAA National Center for the Prosecution of Animal Abuse, the Legal Advocacy program of the ASPCA, the Animal Legal Defense Fund and the Humane Society of the United States.

Given our understanding how animal abuse co-occurs with other violent crimes and erodes the safety of a community, your animal abuse cases should take as high of a priority as any other violent crimes. You never know what you are *preventing* by pursuing an animal abuse case to trial.

For many of us who started prosecuting before 2000, there were few, if any, animal law courses or opportunities for animal law internships while in law school. We were not trained how to handle these sensitive and highly emotionally charged cases. It is important to have the mindset of continuing education, not because your state may require it, but because it will make you a better prosecutor. NCPAA has free newsletters, free monthly webinars (including past recorded webinars), and free technical assistance to help you understand the nuances of animal abuse and prepare the best case for trial.

As with other crimes, you should always meet with the animal survivor(s) if still alive. If meeting the survivor(s) does not instill a sense of responsibility in taking a case to trial, then you should request to have the case reassigned to a prosecutor who can give it the attention required. There is no shame in being more passionate about some cases over others and requesting a reassignment if possible; there is only shame in allowing yourself to pursue a case to trial when you are ill equipped.

Anticipating Defenses

If you can go into the courtroom with evidence, witness testimony, case law and arguments in anticipation of defenses, your trial will run smoother, with less stress and with a greater likelihood of success. If you are in a state where the defendant must disclose his/her defense(s) before trial, it is important for your investigator to check out each defense. You either need to prove the defense and let an innocent person go, or disprove the defense so that you can convict them at trial.⁶²

⁶² NCPAA has a free recorded webinar available, presented by Diane Balkin (former Denver Deputy District Attorney and contract attorney with the Animal Legal Defense Fund) on this topic. Visit http://www.ndaa.org/animal_abuse_archived_webinars.html to register for access.

These are some of the more common defenses that you may encounter on an animal abuse case:

- *It wasn't my animal*

Ownership of the animal is often not an element of the offense. But this is a great defense for having the court declare the animal victims as abandoned. However, it can be a tricky defense to convicting the person charged when they point the finger at someone else who had equal access to the animal. The evidence you should aim to have admitted at trial would be (1) relevant statutory definitions of what constitutes owning, harboring or otherwise having responsibility for an animal in your jurisdiction, (2) veterinary records in the defendant's name, (3) evidence showing who lived on the defendant's property to show that the defendant was the only or primary caretaker; (4) adoption or purchase records in the defendant's name, including purchase of pet food and supplies and veterinary services.

- *Someone else did it!*

Common sense is your greatest ally on this defense. Locate and admit evidence of who was around the animal during the time frame of the abuse, the relationship of the defendant and others to the animal (i.e., the defendant resented/hated the animal whereas others in the home loved and cared for the animal), evidence of prior verbal threats, or even a bragging confession to another. Forensic evidence specifically linking the defendant or his/her residence to the animal victim (e.g. fur, blood, DNA) can help counter this defense.

- *It was a "mercy killing"*

The "Old Yeller" defense is common in states where the law allows the "humane" killing of one's own animals. In some states the killing must also be "justified" (e.g. animal was sick, aged or had attacked someone). However, the methods used (e.g. drowning, blunt force trauma, multiple gunshot, poisoning, suffocation) may fall outside of the guidelines of your state statute and the American Veterinary Medical Association⁶³ recommendations, and thus can be challenged as being an inhumane killing, particularly if there is veterinary or other evidence that the animal was not killed quickly and painlessly. Do not assume that a practice that has been common in the past (e.g. drowning) meets contemporary societal and veterinary standards for humane killing.

- *Defense of self/property*

When a defendant claims to have hurt or killed an animal out of self-defense, defense of another, or defense of property, you will want to admit evidence of the animal's past behavior (typically through the owner of the animal), testimony of others who knew the animal's behavior, and/or evidence of anything the defendant did to have provoked the animal. For example, if the defendant was hitting a family member and the family dog came to the rescue, bit the defendant to get him/her to stop, and the defendant hurt or killed the dog, admitting evidence of the entire situation in addition to expert testimony from an animal behaviorist will help to dispel this defense. When called for, you will also want to introduce evidence that the animal was on his/her property and that the defendant trespassed, or that the defendant had the ability to retreat to safety without harming/killing the animal. In a shooting situation, you may also introduce forensic or ballistics evidence of where the animal was shot to demonstrate whether the animal was aggressing or retreating. If the defendant went back into his/her home to retrieve a gun, then that evidence will work against this defense.

63 AVMA Guidelines Euthanasia for the Euthanasia of Animals: 2013 Edition. Schaumburg, Illinois: American Veterinary Medical Association.

- *It didn't happen or I didn't do it!*

This can occur when there is no injury, no animal body or no weapon. These may be circumstantial evidence cases unless you have an eye witness or photographic/videotaped evidence of the commission of the crime. So like most other trials, you need to piece together the evidence into a clear picture for the jury to understand that the defendant is the responsible offender. Admit other evidence to show the harm, including any injuries to the defendant (bite marks, scratches).

- *I was drunk/high*

Check your state law because voluntary intoxication is typically not a defense to criminal conduct.

- *I was disciplining or training the animal*

You would be wise to call an expert in dog training to show that the actions of the defendant were beyond any recognized discipline or training method. If the defendant had prior warnings from animal control about excessive “discipline” and still continued in their conduct, this will help to show intentional conduct by the defendant.

- *The animal had an accident*

The defendant may claim the animal was hit by a car, fell off of a high level (bookshelf, stairs, etc.) and broke its leg, or inadvertently got into some poison. There is a wealth of information to aid veterinarians and others to distinguish between accidental and non-accidental injury, with well-established guidelines on situations that should raise suspicions of abuse.⁶⁴ The conduct of the defendant immediately after the injury will be telling as to whether it truly was an accident or whether it was caused by the defendant. Obtain a time line of when the harm occurred from your veterinary expert and compare it to when (or if) the defendant sought medical care for the animal as it will be critical to defeating this defense. Also, your veterinary expert will be able to determine if some injuries are consistent with self-injury or injury caused by another. Be sure to ask the veterinarian if they documented that the defendant had any obvious injuries because this may show that the animal fought back or any past healing injuries.

- *Couldn't afford vet care*

- This is where you can demonstrate the resources in your community that would have been available to the defendant at low or subsidized cost (such as spaying and neutering, vaccinations). You can also admit evidence that the relinquishment of the animal(s) to the local shelter is always an option to avoid abuse or neglect. In addition, many veterinary clinics are willing to negotiate special extended payment plans to accommodate clients with limited resources.

- *The animal is a picky eater.*

If the defendant claims that their pet was a picky eater and that is why they are malnourished it is important for a veterinary exam to rule out medical problems that might result in failure to maintain weight. The feeding habits of the animal after being seized should be documented closely. Humane agencies often make a video recording of the first time a seized animal is offered food or water to document its response. In addition, data from weekly weighing that show a consistent weight gain with proper access to food can defeat such claims.

64 L. Sinclair, M. Merck & R. Lockwood, R., *Forensic Investigation of Animal Cruelty: A Guide for Veterinary and Law Enforcement Professionals*. Washington, DC: Humane Society of the United States (2006); J. Cooper & M. Cooper, *INTRODUCTION TO VETERINARY AND COMPARATIVE FORENSIC MEDICINE* (Wiley-Blackwell Publications, 2008); R. Munro & H.M.C. Munro, *ANIMAL ABUSE AND UNLAWFUL KILLING: FORENSIC VETERINARY PATHOLOGY*, (Elsevier/Saunders, 2008); P. Arkow, L. Boyden & E. Patterson-Kane, *PRACTICAL GUIDANCE FOR THE EFFECTIVE RESPONSE BY VETERINARIANS TO SUSPECTED ANIMAL CRUELTY, ABUSE AND NEGLECT* (American Veterinary Medical Association, 2011); M. Merck, *VETERINARY FORENSICS: ANIMAL CRUELTY INVESTIGATIONS 2ND EDITION*, (Wiley-Blackwell, 2011).

- *I am a rescuer and the animal just recently came in this way. I have not had time to address its illness or injury.*

Refuting this defense may require other evidence regarding how long an animal has been in the defendant's care. Usually fraudulent or poorly run rescue groups have no documentation available regarding animal intakes. Evidence that an animal has been at the facility for some time may include testimony from concerned staff or volunteers, testimony from individuals or organizations who may have originally surrendered the animal, or physical evidence such as the accumulation of feces in an unclean cage.

- *I am an animal hospice provider and these animals are dying from other causes.*

Some rescue hoarders will claim that the animals in their care were already diagnosed with a fatal disease and they simply allowed the animals to live out their lives in their care. There are established veterinary medical standards for animal hospice care.⁶⁵ The difference between a hoarder and a true hospice caregiver is that the hospice caregiver does not deny veterinary care or food, and they provide a clean and safe environment for the animal. For the animals, it is important to obtain prior documentation of the claimed "fatal" disease. If no documentation can be provided, an examination of the surviving or deceased animal(s) can determine whether the animal(s) truly had a fatal disease.

- *Attacking evidence (or lack thereof)*

This is commonly an attack on not having forensic evidence. While some may dub this the *CSI effect*, studies have shown that jurors who watch CSI shows are not more likely to demand CSI-type evidence or return a not guilty verdict in the absence of such evidence. One study found that "CSI watching had no direct effect on jurors' decisions, and it had an indirect effect on conviction in the case of circumstantial evidence only as it raised expectations about scientific evidence."⁶⁶ For hundreds of years, and even today, there are cases prosecuted successfully without forensic evidence. You can deal with this during jury selection and in your opening statement to diffuse up front that you will not have forensic evidence and you do not need it to prove the guilt of the defendant. You can put on a good old-fashioned case!

- *I did the best I could*

You can defeat this defense similar to the "couldn't afford vet care" defense. Whether the defendant had limited financial resources, lack of Internet service to find help, or just did not know where to turn, when appropriate you can always present evidence of the resources in your community. If the defendant receives the newspaper each day, introduce articles or advertisements about free or subsidized veterinary services, or about the local animal shelter.

- *The nicely-dressed and apologetic defendant*

This can be a big challenge that can sway a jury into believing that the defendant is really a good person and just made a mistake or was not knowledgeable. Make sure that your investigators take photos of everyone at the crime scene so that you can introduce a photo of the defendant at that time. It is your job to present all of the facts *at the time of the crime* so that the jury understands

65 International Association of Animal Hospice and Palliative Care, <http://www.iaahpc.org>.

66 Young S. Kim, Gregg Barak & Donald E. Shelton, *Examining the "CSI-effect" in the cases of circumstantial evidence and eyewitness testimony: Multivariate and path analyses*, 37 JOURNAL OF CRIMINAL JUSTICE 452-460 (2009), available at: http://works.bepress.com/donald_shelton/13. See also, Janne A. Holingren and Judith Fordham, *The CSI Effect and the Canadian and the Australian Jury*, 56(S1) JOURNAL OF FORENSIC SCIENCES S63-S71 (2011).

the full picture. So if your defendant is neatly dressed for court, present the real picture at the time of the crime. If the defendant is apologetic, claiming ignorance or while crying says “I just did something stupid and it will never happen again,” be prepared to potentially admit other prior misconduct. If you have evidence of prior misconduct towards animals, this may be your opportunity, through Rule of Evidence 404B or another equivalent, to bring in prior “bad acts” by the defendant towards animals to pierce this defense.

Meet with your Investigator, Witnesses and attending Veterinarian

Take the time to meet with your investigator(s), key witnesses and veterinarian before trial. You may learn relevant history of the defendant that may not be contained in the incident reports that can help you prepare for your case. It is also a good time to make sure that witnesses are fully prepared for direct and cross examination, that they are available on the date of trial (and if not it will give you time to request a continuance) and that you answer any questions or concerns that they have about testifying. In meeting with the veterinarian, learn their terminology so that you can ask layman questions to the veterinarian during trial that the jury will understand. And also educate your veterinarian to speak in a manner that the jury will understand. The key role of veterinary testimony is reviewed in Figure 10.

Theme and Theory of Case

NDAA trains prosecutors in its various trial advocacy courses on best practices when presenting your case to the jury. One of the key components of a successful prosecution is to have a clear theme and theory of the case. The *theme* of your case is woven throughout opening statement, testimony and closing argument. It may be as follows: “This is a case about betrayal of trust. It’s about the defendant who took Lucy, an eight-pound cat with a loving disposition, into her home and into her care, only to then beat her within an inch of her life. Lucy had been abandoned outdoors, betrayed by her first owner, only to be betrayed a second time in the hands of this defendant.” The *theory* of the case is where you clearly detail how the beating occurred with the evidence that you have.

In every case, it is important to create a theme and a theory that will then help you to convey a consistent message to the jury. When jury selection, opening statement, direct examination, cross examination and closing arguments are all over the board with no consistency, this can cause confusion for the jury in deciphering the facts and applying them to the law. Clear, consistent theme and theory woven throughout the presentation of your case will help you organize and present an effective case, thus making the decision clear for the jury.

Jury Selection

Selecting a fair jury on an animal abuse case will be specifically tied to the facts of your case. Here are some basic suggestions to consider when selecting a jury:

- Harm to a companion animal = you will want to know which potential jurors have or had have a companion animal in their care; how does they feel about their companion animal; how they feel about laws that protect companion animals (are the laws sufficient, not sufficient, too extreme); whether they have an opinion on whether a companion animal can feel pain (this is important for a torture case).

- Harm to a specific species or breed = you will want to determine if a potential juror has a bias for or against a specific species or breed. For example, how does the potential juror feel about cats, pit bull type dogs, wildlife, etc.?
- Harm to livestock or horse = you will want to know which jurors have or had have a horse or livestock in their care; you will want to identify any farmers in the jury panel to specifically learn whether they feel that laws should protect livestock from harm (whether occurring on the farm in violation of standard husbandry practices or by an outside intruder); how the potential juror feels about laws that protect horses and livestock from abuse even though some livestock and horses may be slaughtered for food (i.e., does this hypocrisy in the treatment of animals and the law cause them to not want to enforce abuse laws).
- Harm to wildlife, stray or feral animal = you will want to know if the potential jurors feel it is appropriate for laws to protect animals who are “unowned”; whether they feel it is appropriate under the law to prosecute someone for harming an “unowned” animal; whether they believe that wildlife, stray or feral animals can feel harm and pain similar to a companion animal.

When selecting a juror, it is a good practice to put yourself in the position of being a juror with the opposite attitude that you want on your case (i.e., they hate all animals and see no problem in harming, torturing or killing them) and then determine what questions need to be asked to get this juror to disclose their true opinion. This “devil’s advocate” mindset will greatly benefit you as you select jurors on animal abuse and other sensitive cases.⁶⁷

Visual Presentation

We live in a visual world and jurors may expect you to use technology in the courtroom to present your case. The use of Power Point is more common for opening statements, closing arguments, and to display physical evidence on a large screen or on small individual screens for each juror. The Elmo machine is also a piece of equipment where you can place evidence and documents for display to the jury, judge and spectators in the courtroom. If technology is not present in your courtrooms and if your agency does not have computer equipment for a technological presentation, you can always create visuals with poster boards that contain the elements of the crime, enlarged photos of the animal victim(s), and a bullet-point listing of the evidence in relation to each element of the crime you need to prove. These visuals can break up the monotony of a trial and can be beneficial for those people who are visual learners. For every case, no matter how small or large, it is important to have some visuals for the jury. It can even simply be of your investigator or the non-offending owner of the animal holding up a photo of what the animal looked like before the abuse and (if still alive) what they looked like after the abuse. Visuals are powerful tools in the courtroom.

Expert Witnesses: Veterinary Testimony

Reports and testimony from veterinarians and veterinary technicians who have attended to the animals involved in an abuse case are often the key to telling the story of an animal that has been injured or killed through abuse. Such testimony can address key issues raised in most abuse cases, as outlined in Figure 10. Veterinarians are among the most respected members of the community and their testimony as

⁶⁷ Animal Legal Defense Fund, in partnership with Richard Matthews, a renowned jury consultant, has developed extensive materials in support of prosecutors on this important issue.

both direct and expert witnesses can be particularly compelling. Veterinary technicians can also provide valuable testimony regarding the behavior and temperament of the animal victim(s) in their care, which may help to diffuse some defenses especially as they relate to an animal being a picky eater (and looking malnourished) or being aggressive. Veterinary professionals can also provide a well-supported, objective community standard for what is considered reasonable and prudent care.

Figure 10

Veterinary Professional Roles

- Documenting the physical condition of all animals associated with an abuse case and documenting changes in their condition in response to care and treatment;
- Commenting on reasonably prudent actions and standards of care that could have been taken to prevent disease, injury or death including basic vaccinations and other preventative care;
- In the case of deceased animals, determining the cause of death, sequence of injuries and timing of pre-mortem or post-mortem wounds;
- Offering expert opinion to distinguish between death and injury resulting from human vs. non-human causes (e.g. predation) or intentional vs. accidental injury;
- Identifying and preserving physical evidence that may link the injuries to a particular suspect (e.g. projectiles, ligatures, trace evidence); and
- Offering opinions regarding the speed of unconsciousness or death, and degree of suffering to evaluate whether the death or killing was humane.

It is important to document not only the medical condition of animals at the time of the initial investigation, but also the temperament, recovery and/or deterioration of animals over time. The relatively rapid transition of a dog from a “bag of bones” to fully fleshed out animal with a healthy coat is strong testimony to the fact that all it took was basic care to have a healthy animal.

Defendants may call their own veterinarians as witnesses to document prior care, but such testimony can provide sharp contrast to the conditions underlying the abuse charges and may actually strengthen the prosecution’s case. Contact NCPAA for assistance in cross-examining a defense expert and obtaining any available impeachable documentation on a defense expert witness.

Other Expert Testimony

Special circumstances may necessitate employing other professionals with expertise in animal care to help clarify events that transpired or call defense theories into question. This might include veterinary specialists such as pathologists or toxicologists. It may also include veterinary behaviorists or certified applied animal behaviorists to address behavioral issues, or a “Link” expert to explain the research supporting the co-occurrence of crimes against animals and people (this is often more relevant at the time of sentencing). Some animal abuse cases have used other scientific experts including DNA specialists, ballistics experts and psychologists. Cases involving livestock abuse may benefit from having industry-

specific animal husbandry experts who can address issues regarding commonly accepted practices that may have been violated or ignored.

The prosecution of an animal abuse case may also involve participation of professionals from agencies other than law enforcement or animal care that may have had to become involved in the response to the animal related complaint. This may include mental health professionals, child protective services, adult protective services, domestic violence responders, healthcare workers, and sanitation and fire professionals. These professionals may provide added insight into the conditions found at the scene and their impact on people as well as animals exposed to these conditions. Lastly, you should consider an expert psychologist or therapist who can inform the court about treatment options for the offender and the need for treatment.

Other Community Witnesses

Neighbors and other community members often know more about how someone is treating his or her animals than they do about the person. Testimony regarding a history of public mistreatment may be important in establishing a pattern of intentional cruelty. Other community members may have had an opportunity to observe the behavior and treatment of the animals in question, including letter carriers, other delivery personnel, utility workers, pet sitters, groomers and others. Make sure that these individuals are interviewed by investigators and are prepared to testify in court, even if it involves testifying against a neighbor.

Animal Victim in Court

There are laws in place that allow all human victims an opportunity to be in court, whether to testify or to observe the proceedings. Yet, there are no state laws specifically addressing animal victims being in court. This is likely due to the fact that animals would not understand what is occurring. However, does this mean that you should preclude animal victims from coming to court with their non-offending owner when appropriate?

You will want to weigh the pros and cons of making a request to have your animal victim in court and whether it will help or hinder your case. It is advisable to request the court for permission to have the animal victim appear in court since bringing an animal to court is an unusual request. While there are no victim's rights laws for animals and animals are deemed "property" under the law and sentencing guidelines, animals are protected by law from being victimized and you could argue this distinction. If you plan to offer the animal victim as "evidence" by showing the animal to the jury, then a pre-trial motion outlining the request would be important.

In a different measure, Rhode Island now has a statute that allows the court to appoint the state veterinarian or designee to act as an advocate to "make recommendations to any court before which the custody or wellbeing of an animal is at issue." R.I. Gen. Laws §4-1-31.

SENTENCING OPTIONS

In the prior section on Plea Agreements, various options were discussed that should be included as part of a guilty plea. Upon a guilty conviction by the trier of fact, there are certain sentencing conditions that prosecutors should request and/or make known to the probation agent preparing a pre-sentence report. Even if your state does not have a specific law allowing for these options, you can certainly make the request of the judge.

Incarceration

The dangerousness assessment factors mentioned in Figure 3 can be helpful in addressing the types of offenses requiring particular attention for the protection of the community. The penalties for a state law conviction of animal abuse can range from no jail time up to a 10 year maximum sentence. Current felony animal cruelty provisions allow for jail or prison sentences ranging from six months to ten years. Since serious and violent animal cruelty offenses are often associated with other crimes, judges have increasingly been instituting maximum sentences in instances of repeated, violent or severe animal cruelty. In cases involving juvenile or non-habitual offenders, most courts have recognized the value of some jail time as an important part of the balanced approach to holding perpetrators accountable. Such sentences are then usually blended with a substantial period of probation supervision to allow for treatment and rehabilitation.

Probation

For any defendant receiving a sentence other than prison, it is important to place the defendant on probation to allow for oversight and reduce the chances of recidivism. A maximum term of probation will also allow for other sentencing options listed below. Much of the concern about animal abuse cases centers on what these actions may tell us about the capacity of the offender to engage in future violent acts against people and property. For this reason, probation of the longest possible duration can be one of the most desirable outcomes in such a case.

Banning ownership/possession of animals

Conviction on animal abuse charges implies an inherent inability to provide appropriate care to animals in the future. Fourteen states have specific provisions to allow for a judge to ban a defendant from owning or possessing animals.⁶⁸ As part of this request, it is important to request that all affected animals (including born and unborn animals) be forfeited to an animal protection organization for rehoming and placement. Typically the ban is for the term of probation. It is also important to request that probation agents be permitted to make unannounced home visits as a term of probation to ensure that this provision is enforced.

⁶⁸ Colorado, Delaware, Maine, Maryland, Michigan, Minnesota, Montana, New Hampshire, New York, Tennessee, Vermont, Virginia, West Virginia and Wyoming. Listing available at http://www.pet-abuse.com/pages/cruelty_laws.php.

In severe neglect or animal hoarding cases the courts have often been reluctant to remove all animals from the care of the offender. If the defendant is allowed to keep animals following conviction, the numbers should be consistent with local limits and with the individual's demonstrated capacity to provide care. In addition, sentencing should include provisions for reasonable monitoring of compliance with these limits by animal care and control or other authorities.

Limits on Employment

Some states restrict those convicted of animal abuse from employment in professions involving direct contact with or responsibility for animals, including positions in animal care and control. Whether your state has a law in this regard or not, and depending on the nature of the defendant's actions, you may want to make this request at the time of sentencing. This would also be consistent with requesting that the defendant not possess, own or be around animals.

Court-ordered evaluation and counseling

If the defendant was not ordered pre-conviction to undergo a psychological evaluation, the prosecutor should request at the time of conviction and before sentencing that it occur. Dependent upon the findings in the evaluation, the prosecutor should be prepared to ask for specialized and appropriate counseling for every defendant convicted of animal abuse (regardless of the factual circumstances). Whether the facts involved the torture and killing of animals or allowing a dog tethered to a chain outdoors to become malnourished, individuals who harm animals are in need of some treatment to avoid recidivism.

Since animal abuse takes many different forms, with a variety of different underlying motives and processes, no "one size fits all" program is appropriate for all offenders. However, there are standardized approaches for dealing with many types of offenders. One treatment program that is specifically designed for animal abusers, both adult and child, is the AniCare Program.⁶⁹ AniCare is an empathy-based treatment program. "The AniCare program uses a cognitive-behavioral approach with direct interventions emphasizing the client's need to acknowledge accountability for his or her behavior (much like the approach used with spouse batterers). It involves both assessment and treatment, using exercises that clinicians use to suggest specific interventions for the particular client. It addresses seven major concepts: accountability, respect/freedom, reciprocity, accommodation, empathy, attachment and nurturance."⁷⁰ Animals & Society Institute (see resource list) oversees the AniCare program and can advise you as to whether any AniCare providers are available in your jurisdiction. Several other organizations, including the ASPCA and the National Link Coalition, can assist mental health professionals involved in court-ordered assessment or treatment of animal abuse offenders in identifying assessment tools and other resources that can be helpful in working with such clients.

Currently 26 states have laws addressing court-ordered psychological evaluations and 32 states have laws for court-ordered treatment for convicted animal abusers.⁷¹ Whether a state has a law in place or not, a prosecutor should request psychological assessment and treatment and be prepared to recommend specific

69 You can learn about AniCare at <http://www.animalsandsociety.org/pages/anicare>.

70 Id.

71 List of state laws is available at http://www.ndaa.org/animal_abuse_resources.html.

community treatment programs relevant to animal abusers (and avoid the catchall “anger management” treatment unless warranted). A prosecutor may also want to enlist the services of an expert psychologist or therapist who can discuss the importance of treatment at the time of sentencing.

Community Service

If the court orders community service, it is important to have the court order specifically state that community service shall not involve animals. Too many well-intentioned prosecutors have requested or allowed a judge to order community service at an animal shelter under the misguided belief that working with animals will encourage empathy and reduce the chances of recidivism. This is not true. Anyone convicted of a violent crime or animal abuse should never be allowed to work around animals unless it is part of a structured and supervised animal-assisted intervention program.

Cost of Care by Statute or Restitution

With most animal abuse cases, there will be financial costs for the care and veterinary treatment of the living animal(s) or for the expense of processing the deceased animal(s). Since some of the assisting agencies will be governmental-funded animal shelters or nonprofit animal protection organizations, it will be important for them to be reimbursed for the cost of services. Before proceeding to sentencing, be sure to ask each agency for a detailed accounting of the costs of care and services provided and then seek reimbursement for all costs. Use caution when dealing with the traditional restitution model, where a failure to secure an agreement for all costs can result in the defendant only being required to pay for the counts subject to the plea agreement.

License Revocation

If the defendant has a license for a boarding facility, to breed animals, or any other venture that involves the care of animals, you will want to consider requesting the court to revoke the license of the defendant. You may also need to pursue administrative remedies with the appropriate licensing agency to have the license revoked.

Victim Impact Statements

Crime victims are allowed to give a victim impact statement (verbally or in writing) to the court at the time of sentencing. This same right should apply to the owner(s) of the animal victim(s). The non-offending owner of the animal should be afforded the opportunity to provide a victim impact statement, regardless of how your state labels crimes against animals. In some cases veterinary or shelter staff that have provided extensive care and rehabilitation for animal victims of abuse have been permitted to make statements at sentencing. This can help demonstrate the level of community involvement with and concern for the animal victims of crime. A prosecutor should vigorously advocate for this in every case where there is an owner. If there is no owner to come forward and provide a victim impact statement, it is incumbent upon the prosecutor to be that voice at the time of sentencing. For additional information on victim impact statements, please visit the Animal Legal Defense Fund website.⁷²

⁷² *Victim Impact Statements in Cases of Animal Cruelty*, available at <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/victim-impact-statements-in-cases-of-animal-cruelty/>.

JUVENILE OFFENDERS IN ANIMAL ABUSE CASES

The Role of the Juvenile Prosecutor

“Acts of animal cruelty committed by children challenge our prosecutorial ability to maintain the balance of the prosecutorial dichotomy necessary to be effective professionals. Children are supposed to love animals, to have a special bond with them. However the sad reality is that approximately thirty percent of intentional animal cruelty cases are committed by juvenile or young-adult offenders.⁷³ It makes us wonder what broke that bond?”⁷⁴ These words by Jennifer Rallo, an Assistant State’s Attorney for the City of Baltimore in Maryland, sets the stage for what may be some of the most challenging cases for a prosecutor. Ms. Rallo, who specializes in the prosecution of violent juvenile offenders and is also a member of the Mayor of Baltimore City’s Anti-Animal Abuse Commission, outlined in her 2013 article *Prosecuting the Youthful Offender*, that the prosecutor’s role in handling a juvenile incident of animal abuse is far different than in adult court. She outlined that in addition to the traditional role of public safety, proving the crime and holding the offender accountable, there is the additional role of assessing rehabilitative possibilities for the juvenile. She explains, “[w]hen a child has committed an act of animal cruelty the case must be taken very seriously by prosecutors, no exceptions. The presence of animal cruelty within a juvenile’s history is a significant finding.”⁷⁵

The balanced approach to juvenile justice aims to address three primary concerns: (1) holding juvenile offenders accountable for their actions, (2) enhancing community safety, and (3) developing the offender’s competencies to become a contributing member of society. The outcome of the prosecution of a juvenile animal abuser should add a fourth concern to this list: (4) providing for the interests of the animal(s) involved and other animals that may be affected. Animal abuse committed by juvenile offenders will raise an even higher degree of scrutiny by the general public. Whatever the final outcome of a case, it is likely to be criticized by some as the proverbial “slap on the wrist” particularly if this is the juvenile’s first offense or if sentencing guidelines provide for relatively limited punishment. Prosecutors should attempt to clearly communicate the realistic limitations of the juvenile justice system as it relates to the case at hand, and their commitment to addressing the concerns of the balanced approach to the fullest extent possible.

What the Research Reveals About Child and Youthful Offenders

Most people can agree that we are not born to be abusive towards to animals; it is a learned behavior. Several studies have shown that when children are exposed to violence (whether violence towards humans or animals), they have a greater likelihood of becoming a violent offender (either towards humans or animals).

73 Randall Lockwood, ANIMAL CRUELTY PROSECUTION: OPPORTUNITIES FOR EARLY RESPONSE TO CRIME AND INTERPERSONAL VIOLENCE, 33. (American Prosecutors Research Institute, July 2006).

74 Jennifer Rallo, *Prosecuting the Youthful Offender*, 3(2) TALES OF JUSTICE 1 (2013), available at http://www.ndaa.org/animal_abuse_newsletter_mailinglist.html.

75 *Id.*, 2.

- A 2009 study showed that children who witnessed animal abuse were more than eight times more likely to become a violent offender, and witnessing animal cruelty was *the* biggest predictor of later violence by the child.⁷⁶
- A 10-year study of at-risk children showed that those who were classified at age 6-12 as cruel to animals were more than twice as likely as others in the study to be subsequently referred to juvenile authorities for a violent offense. Of those reported to be both cruel to animals and fire setters, 83% had later involvement in violent offenses.⁷⁷
- A 2007 study of families at five Utah domestic violence shelters showed that of the 66.7% of the shelter children who observed animal abuse, 37.5% of them had harmed or killed their pets.⁷⁸
- A 1998-2005 study found that frequent use of spanking of three-year-olds was associated with higher levels of child aggression when the child was five, including temper tantrums and lashing out physically against other people and animals.⁷⁹
- Children who are physically punished more frequently before adolescence are more likely to abuse animals.⁸⁰
- Children exposed to domestic violence were 2.95 times more likely to engage in animal cruelty.⁸¹
- And 36.8% of boys and 29.4% of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse their family pet.⁸²

In her article, Jennifer Rallo shares:

“In 1963 J.M. MacDonald published, “The Threat to Kill” in the American Journal of Psychiatry describing how his studies had identified the presence of three behavioral characteristics in childhood: animal cruelty, fire setting, and enuresis (bed wetting) as indicators of future violence.⁸³ This triad has been widely established as indicia that juvenile prosecutors should look for when screening delinquent youth for those in need of more extensive treatment and services. As further evidence of the connection, examinations of the childhoods of serial killers, such as Jeffrey Dahmer, Albert DeSalvo, and Carroll Edward Cole, revealed that many had engaged in childhood acts of animal cruelty. A similar examination of mass school shooters also revealed many had begun by

76 DeGue & DeLillo, *supra* at 1050.

77 K.D. Becker, V.M. Herrera, L.A. McCloskey & J. Stuewig, *A Study of Firesetting and Animal Cruelty in Children: Family Influences and Adolescent Outcomes*, 43 (7) J.A.M.ACAD. CHILD ADOL. PSYCHIATRY 905 (2004).

78 Ascione, Weber, Thompson, Heath, Maruyama & Hayashi, *Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and by Nonabused Women*, 13(4) VIOLENCE AGAINST WOMEN 354-73 (2007).

79 C.A. Taylor, J.A. Manganello, S.J. Lee & J.C. Rice, J.C., *Mothers' spanking of 3-year-old children and subsequent risk of children's aggressive behavior*, 125(5) PEDIATRICS 1057-1065 (2010).

80 C.P. Flynn, *Animal abuse in childhood and later support for interpersonal violence in families*, 7 SOCIETY AND ANIMALS 161-172 (1999).

81 Currie, *Animal Cruelty by Children Exposed to Domestic Violence*, 30 CHILD ABUSE & NEGLECT 425-35 (2006).

82 F. R. Ascione, *CHILDREN & ANIMALS: EXPLORING THE ROOTS OF KINDNESS & CRUELTY* 137 (West Lafayette, IN: Purdue University Press 2005).

83 Linda Merz-Perez & Kathleen Heide, *ANIMAL CRUELTY: A PATHWAY TO VIOLENCE AGAINST PEOPLE* 6 (Alta Mira Press 2004).

harming animals. For example, Luke Woodham who murdered his mother and two students wrote gleefully in his diary about how he had killed his own dog with friends by beating her, setting her on fire, and then throwing her in a pond.⁸⁴ The common thread appears to be that these violent individuals enjoyed torturing animals as children.

Contemporary consideration of the “MacDonald triad,” or “triad of sociopathy,” puts less emphasis on the presence of the acts themselves as indicators standing alone. Instead the presence of the triad is seen as an indicator of children who are in stressful environments and have developed maladaptive behaviors as a result. Psychological research has shown that thirty percent of children who have been the victims of abuse or witnessed domestic violence have gone on to perform acts of animal cruelty on their pets.⁸⁵ Neuropsychological research is also revealing that a childhood lack of empathy is often an inherited quality with an eighty percent probability of being inherited from a carrier parent. Brain scans of children who inherited the trait showed distinct differences from the brain scans of children with normal levels of empathy.⁸⁶ Societal inhibitors guide the behavior of individuals lacking in empathy to conform to social norms. Researchers also believe that with early treatment and cognitive therapy, sociopathic children’s brains can be re-wired so that they will be able to experience greater empathy and no longer be at risk for future violence.⁸⁷”

Charging the Juvenile Offender

“When a child is accused of harming an animal, dismissing the charges or allowing the child to admit to a non-animal abuse offense is not in the best interests of the community or the child offender. These are cases where a solid stance is necessary.”⁸⁸ Juveniles are more likely to be charged with intentional cruelty and torture, rather than neglect. The juvenile case requires a strategic coordination between investigators and prosecutors. It is important for all investigators, not just those charged with handling animal abuse cases, to understand that when a young offender has been identified as harming an animal, transporting the youth to a hospital for psychiatric treatment rather than processing the case as a crime can result in the youth not receiving the long-term treatment and intervention needed.

These are also not the cases where you are “too busy” to follow through on a thorough investigation and preparation for trial. While the public may clamor for a speedy investigation and instant charging of the youth, it is important to have all of the evidence and for the prosecutor to make a careful decision on what is in the best interests in the community, the juvenile offender, and the animal victim.

Charging and related decisions should be based on the nature of the offense, the availability of alternative approaches and the community resources for dealing with young offenders. Since cruelty can be indicative of ongoing family violence, juvenile or family court may be the most appropriate venue to assess the family

⁸⁴ *Id.* at 32-33.

⁸⁵ Joni E. Johnston, *Children Who are Cruel to Animals: When to Worry*, PSYCHOLOGY TODAY, April 27, 2011.

⁸⁶ Jennifer Kahn, *Can you Call a 9-Year-Old a Psychopath?* NEW YORK TIMES MAGAZINE, May 11, 2012.

⁸⁷ *Id.*

⁸⁸ Rallo, *supra*, at 3.

dynamics and provide an overall treatment plan. Acts of cruelty committed by a very young offender may often indicate a family in need of services or an offender requiring special mental health assessment and intervention.

Currently, no states have provisions for automatic waiver and transfer from juvenile to adult court of even the most violent, repeated or egregious of acts of animal cruelty. However, review of the nature of the offense with respect to dangerousness assessment may be relevant to making a transfer determination. In non-animal juvenile cases (which may be instructive in animal abuse cases), the suggested factors in considering a waiver include:⁸⁹

- The seriousness of offense to the community and whether protection of the community requires a waiver.
- Whether the offense was committed in an aggressive, violent, premeditated or willful manner.
- The interpersonal nature of the crime. Courts traditionally give greater weight to acts against persons rather than property, but animals should be considered as a special category of “sentient” property for purpose of waiver.

Disposition for the Juvenile Offender

Unlike adult court, the job of a juvenile prosecutor will continue past disposition and into frequent status hearings between the juvenile offender and the court. This is a golden opportunity for prosecutors to ensure that the juvenile is complying with all terms of probation and receiving the appropriate therapeutic treatment. As previously mentioned in the Plea Agreements and Sentencing sections, the prosecutor will want to seek certain sanctions and probationary provisions, such as:

- Psychological evaluation and specialized treatment addressing the abuse of animals and re-engaging empathy;
- Ensuring that the juvenile does not have access to any animals, which may involve speaking the family about placing family pets with other relatives, friends, co-workers or relinquish the pet(s) to the local shelter for adoption; and
- Humane education programs.

Rehabilitation and active efforts to prevent recidivism of harm towards animals and/or progression of harm towards people is critical for a juvenile animal abuser. Ensuring that the youth receives the proper treatment balanced with the appropriate punishment to deter future violence is the best way to avoid the juvenile becoming an adult offender.

⁸⁹ NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES (National Council of Juvenile and Family Court Judges, 2006).

HANDLING COMMUNITY RESPONSE TO ANIMAL ABUSE: YOUR NEW REALITY

You will encounter more community interest, public outrage, social media activity, emails, phone calls and possibly picketing on your animal abuse cases than any other case that lands on your desk. Why? It is because animals are truly the most innocent victim. They cannot call 911, report a crime, take themselves for medical care, seek therapy, or testify in court. Their only voice for justice will be as good as the investigator on their case and the strength of the prosecutor in the courtroom.

If the prosecutor and/or investigator handling the case are not strong on behalf of the animal victim, your community will be that voice. Communities embrace abused animals, whether alive or deceased, and will loudly advocate for justice. Before “the link” became widely recognized by law enforcement and mental health professionals, the general public accepted the idea that someone who harms an animal may be on their way to harming humans. When a community becomes involved, this can impact your case. Therefore, it is important to understand how these varying groups of passionate people work and how you can work with them for a positive end result.

Animal Advocate viewpoint

- Their primary focus is on the animal victim; they want the animal to be rescued, healed of its physical and emotional injuries, and then rehomed in a safe place.
- They will donate to help care for the seized animals, to provide foster care, and offer other direct services for the animal(s).
- They also want to help you catch the offender and ensure that justice is served.
- They can be very helpful in disseminating “wanted” information (by foot or by social media) to catch an animal abuser and may contribute to reward funds or respond to information distributed by Crimestoppers or similar groups
- They may have a perception that prosecutors and investigators do not properly handle animal abuse cases and will second-guess and critique your actions without having all of the knowledge that you have about your case or a good understanding of the rules of evidence
- A few may take the law into their own hands if they believe that investigators and prosecutors are responding inappropriately (i.e., rescue an animal from a situation without legal authority or while an investigation is pending).
- If they feel that the case is being handled improperly or that information is being withheld, they will publicly complain to get action. This could be a campaign asking people to phone or email you, an online petition seeking justice for the animal or seeking your removal from office, picketing outside of your office, or showing up in court.
- These are well-intentioned individuals who deeply care about animals who are frustrated when they see inaction, lack of transparency, and decisions made that seem contrary to seeking justice. The best way to utilize these individuals is to educate them on the boundaries of the law, ask them to help when appropriate, and, when ethically allowed, be transparent about the case.

Community viewpoint

- Your community is filled with people who love their pets and when they hear about an animal abuse situation, they will want to help. Call upon your community to:
 - Ask for help in locating an offender;
 - Ask for donations (money and items) to help care for seized animals;
 - Ask for foster homes to come forward to care for the animals to alleviate overcrowding at the animal shelter; and
 - Ask for adopters for the animals.
- Their focus is mostly balanced on the well-being of the animal victim(s), holding the offender accountable, and public safety.
- They have a perception that prosecutors and investigators may have limited resources to properly handle animal abuse cases and would like to help.
- They are likely to sign (not initiate) a petition seeking justice and may attend a rally or public gathering.

Media viewpoint

- The media knows that animal abuse cases are high profile media stories. Animals and crime are big news.
- The media will look for a mistake in the investigation and prosecution, and complaints from community members, because that makes news.
- A reporter may be tipped off about a pending or breaking case, so getting a statement prepared early on will be a great way to control the information shared publicly about your case.
- Utilize the media to share information about reward money for locating the offender(s), to educate people about the consequences of abusing animals, to warn people about certain conduct such as leaving a dog in a hot car, and to share heart-warming stories of rescue and recovery of abused animals who finally find a loving home.
- They will not hesitate to expose inaction or an improper investigation or prosecution.

Social media impact

Social media sites are where people now congregate, get news stories, and share information. Whether you engage in social media or not, chances are your case will make its rounds through social media. Animal interest stories, including stories of animal abuse, overwhelmingly go viral on social media. The instantaneous nature of much social media means that there is strong likelihood that much of the information being disseminated is incorrect or incomplete. Engagement amongst users on social media sites, and the likelihood of sharing stories (which can make the story go viral), overwhelmingly occurs on animal-related stories. So you will want to peruse social media sites frequently in case your particular case is being discussed. This could impact the selection of a fair jury and you will want to know if false or incorrect information is being disseminated. Animal protection organizations working with law enforcement on a case must have a strong policy prohibiting dissemination of any activity about a case in progress without specific permission from the Public Information Officer of the lead agency in the case.

Here are some suggestions for handling social media and the public perception of your case:

- Understand, don't dismiss, the view point of those advocating for justice for the animal victim(s). This will give you great insight into your potential jury.

- Prepare to have packed courtrooms of interested citizens, including the possibility of formal “court watch” participants.
- Be open to speaking with concerned citizens and advocates to explain the boundaries and limitations of the law and/or any other information that you can ethically share to help them understand and support you on handling the case.
- Set up Google alerts on yourself so that you know if stories or social media pages are commenting about you or your case. This will help you to identify any issues while selecting a jury.
- Be very careful about what you say on your private social media pages because your friends could share your comments and make them public. This could impact you in selecting a jury.
- Understand that the creation of better laws is being driven by communities and caring citizens who are vocal and advocate to legislatures and during court cases.
- Educate the community that vigilante justice will only seek to distract efforts from the real victims and could actually harm animal victims.
- Understand that animal advocates are coordinated and connected on social media. They can be helpful in your cases, or can be your worst nightmare. How you interact with them will determine how they interact with you.

Breaking down silos

Handling animal abuse cases should not happen in a vacuum. Collaborating is essential to a successful outcome. Here are some things to consider:

- Get the right people on the bus. If you are assigned to handle animal abuse cases and do not have a desire to work on them, ask to be reassigned and for another coworker to take over. Not everyone is cut out to handle animal abuse cases and it is okay to ask for reassignment.
- Prosecutors and investigators should work together early on so that expectations are clear and lines of communication are open during an investigation.
- Make sure that everyone on the team is trained in the proper handling of animal abuse cases and is outwardly professional in their dealings, especially with the public. The easiest way to cause suspicion and the spread of misinformation about your case is to be rude to a concerned citizen.
- Do not be afraid to ask for help. For many career prosecutors, animal abuse classes were not available during law school.
- Involve the community and educate on animal care issues (i.e., preventing pets in hot cars, looking out for abandoned and neglected animals in backyards, etc.).
- Avoid automatic euthanasia of animals seized, especially in a large-scale investigation. Find the resources through local, state or national animal protection organizations to assess, test and treat the animals so that most, or all, can be rehomed or placed in safe settings. If you euthanize a large number of abused animals, you will have to answer that to a jury who may not see that action as any different than what the defendant is alleged to have done.
- Ensure that in every step of the process, your four-legged victims are protected like two-legged victims.

OVERCOMING VICARIOUS TRAUMA, COMPASSION FATIGUE AND BURNOUT

Many investigators, prosecutors and shelter workers who work on animal abuse cases and with animal abuse victims will experience vicarious trauma, compassion fatigue and burnout. Vicarious trauma involves the empathetic engagement with traumatic experiences and taking on the trauma suffered by another. Compassion fatigue is a type of emotional exhaustion from observing suffering and trauma. It comes from a source of caring and feeling helpless when things do not go as planned. It is common for animal shelter workers and others who help abused animals to suffer from compassion fatigue at some time. Burnout, on the other hand, can result from any form of constant stress, not necessarily related to caring for others, including animals.

The nature of working with our most helpless victims can cause vicarious trauma, compassion fatigue and burnout even in the most solid people. This does not mean that you are weak; it means that you are human. Many prosecutors and investigators tune out as soon as a “soft” topic like vicarious trauma, compassion fatigue and burnout is mentioned, but it is vitally important that you read this section. If you do not take care of yourself, it will negatively impact your work and the outcome of your cases.

Vicarious trauma, compassion fatigue and burnout can occur in several ways: (1) through seeing the devastating harm that humans can cause to animals; (2) dealing with some of the most disturbed criminals in the system, (3) being told by supervisors, judges, defense attorneys and other individuals that pursuing animal abuse cases is a waste of time, (4) dealing with insensitive co-workers and other individuals who mock you for your desire to help, (5) handling disappointing jury verdicts and slap-on-the-wrist sentences from judges, (6) dealing with the public who will scrutinize your every move, and (7) from your own inner voice telling you to keep helping even when your heart is breaking.

Some symptoms of vicarious trauma, compassion fatigue and burnout include helplessness, feeling like a failure in being able to protect your community, sleeplessness, anxiety, panic attacks, exhaustion and fatigue, depression, hopelessness, digestive issues, physical aches and pains, and headaches.

What can you do to address these traumas so that you avoid burnout? Here are some recommended steps to take:

- Do not berate yourself when you become upset over how animals are maltreated; recognize that you are in a great position of power to take action, protect the victims, punish the offenders, and at the end of the day know that you contributed positively to your community.
- Do not engage in addictive behavior to soothe the trauma.
- Engage in activities that make you feel good, such as exercising, dancing, writing, painting, etc. At the end of the day, be sure to reward yourself with an activity that makes you feel better.
- Celebrate each successful case, and learn from the cases where you received an adverse outcome.
- Keep a scrapbook of photos or articles regarding your successful cases. During dark days, it is soothing to look back on the faces of all the animals that are now safe because of you and your investigative team.

- When you work to help animals, people will naturally want to talk to you about your work that can become overwhelming at times. Make sure that you designate time frequently that is “non-animal” time. Be sure to have other hobbies that do not involve your work with animals. You need to take a break every now and then to rejuvenate. Be diligent in maintaining a healthy boundary so that you can be effective for the animals.
- Surround yourself with positive people. Negative and toxic people will bring down your energy and make it difficult to handle the strong emotions that may arise in handling these cases.
- Seek the help of a professional counselor if feelings of despair about the animals are overwhelming. It takes a courageous person to ask for help, so do not feel embarrassed to receive guidance. Have a support system of friends, family and colleagues that you can talk to when a situation becomes difficult. Do not keep your feelings bottled up inside.

For additional information on compassion fatigue involving animals, check out *Compassion Fatigue in the Animal Care Community* by Charles Figley and Robert Roop and *Defending the Defenseless: A Guide to Protecting and Advocating for Pets* (2011) written by co-author Allie Phillips which has a chapter dedicated to this issue.

RESOURCES

NDAA's National Center for Prosecution of Animal Abuse

http://www.ndaa.org/animal_abuse_home.html

NCPPA is a resource for prosecutors, law enforcement and allied professionals. We offer free monthly live webinars, access to past recorded webinars, online newsletter, technical assistance, and access to our expert advisory group.

American Society for the Prevention of Cruelty to Animals

www.aspcapro.org and www.aspcapro.org

Founded in 1866, the ASPCA was the first humane organization in the Western Hemisphere. Its mission is to provide effective means for the prevention of cruelty to animals throughout the United States. The ASPCA provides national leadership in cruelty prevention. The ASPCA provides current information on animal laws; training for prosecutors, police officers and others in law enforcement; veterinary forensic training and consultations; behavioral assessment and rehabilitation of animal victims, expert witness testimony and other assistance to prosecutors and law enforcement agencies.

Animal Legal Defense Fund

www.aldf.org

Through its Criminal Law Division, ALDF works with prosecutors and enforcement agencies to ensure that state criminal anti-cruelty statutes are vigorously enforced, and that those convicted of abuse, cruelty and neglect receive appropriate sentences. ALDF also awards monetary grants to assist attorneys with worthy animal-related cases.

Animals & Society Institute

www.animalsandsociety.org

The Animals and Society Institute provides training for mental health professionals on the assessment and treatment of animal abusers using the Anicare and Anicare Child programs. It also maintains a directory of professionals trained in evaluating and treating those convicted of animal cruelty.

Community Oriented Policing Services, U.S. Department of Justice

www.cops.usdoj.gov

The COPS office provides several resources related to the investigation and prosecution of animal cruelty. They have provided support for the development of the *Dogfighting Toolkit for Law Enforcement: Addressing Dogfighting in Your Community* in cooperation with the ASPCA. The Toolkit includes a Prosecutor's Guide to Prosecuting Dogfighting.

Michigan State University College of Law/Animal Legal & Historical Center

www.Animallaw.info

This site maintains an extensive directory of full text cases (US, Historical and UK) and U.S. statutes fully available on the site. Also provides detailed reviews of legal background on dozens of animal-law related topics and full-text of many relevant law review articles.

National Link Coalition

nationallinkcoalition.org

Led by a *steering committee* of nationally-renowned experts in the prevention of all forms of family violence, the National Link Coalition is an informal, multidisciplinary collaborative network of individuals and organizations in human services and animal welfare who address the intersections between animal abuse, domestic violence, child maltreatment, and elder abuse through research, public policy, programming and community awareness. The National Link Coalition provides many resources on the connection between animal cruelty and interpersonal violence, including an extensive bibliography of research on the subject and a monthly newsletter.

Pet Abuse.com

www.Pet-abuse.com

Pet-Abuse.com maintains a database of thousands of cases of animal abuse and neglect with comprehensive tracking of case prosecutions and outcomes. It is a valuable resource for prosecutors wishing to quickly identify animal cruelty cases that have been investigated and/or prosecuted in their state.

Sheltering Animals & Families Together (SAF-T)

www.animalsandfamilies.org

SAF-T is the first and only global initiative providing guidance to family violence shelters on how they can welcome families with pets. The extensive SAF-T Start-Up Manual details how to create this program and safe lives.

The Humane Society of the United States

www.humanesociety.org

The HSUS is the nation's largest animal protection organization. HSUS provides rewards in animal cruelty cases, information on current and pending animal protection legislation and specialized training and assistance in the investigation of dogfighting and cockfighting.

United States Department of Agriculture

http://www.aphis.usda.gov/publications/animal_welfare/2011/dogfighting.pdf

USDA's Animal and Plant Health Inspection Service (APHIS) and Office of Inspector General (OIG) work with state and local authorities to investigate and enforce federal and state laws against animal fighting.

University of Florida/ASPCA Forensic Veterinary Sciences Program

<http://forensics.med.ufl.edu/>

The partnership between ASPCA and the University of Florida offers graduate level instruction in Veterinary Forensic Sciences including a Certificate Program and a Masters degree program specifically focusing on the application of veterinary medicine and modern forensic techniques to the investigation and prosecution of animal cruelty.

About the National District Attorneys Association

The National District Attorneys Association is the oldest and largest professional organization representing criminal prosecutors in the world. Its members come from the offices of district attorneys, state's attorneys, attorneys general, and county and city prosecutors with responsibility for prosecuting criminal violations in every state and territory of the United States. Its purposes are:

- to foster and maintain the honor and integrity of the prosecuting attorneys of the United States in both large and small jurisdictions by whatever title such attorneys may be known;
- to improve and to facilitate the administration of justice in the United States;
- to promote the study of the law and legal research, the diffusion of knowledge and the continuing education of prosecuting attorneys, lawyers, law enforcement personnel, and other members of the interested public by various means including, but not limited to, arranging conferences and fostering periodic meetings for the discussion and solution of legal problems affecting the public interest in the administration of justice;
- to cause to be published and to distribute articles, reports, monographs, and other literary works on legal subjects or other related subjects;
- to provide to state and local prosecutors the knowledge, skills and support to ensure that justice is done and the public safety and rights of all are safeguarded.

To become a member of NDAA, please visit www.ndaa.org.

About the National Center for Prosecution of Animal Abuse

The National Center for Prosecution of Animal Abuse (NCPAA) is a program of the National District Attorneys Association (NDAA), created in partnership with the American Society for the Prevention of Cruelty to Animals (ASPCA) and Animal Legal Defense Fund (ALDF) to educate and train prosecutors and allied professionals on the effective handling of animal cruelty and neglect cases, including cases involving the co-occurrence of animal abuse and violence to people. NDAA desires to bring greater awareness to the often misunderstood nature of animal maltreatment and how it can interconnect with family violence and contribute to lethality issues for victims of interpersonal violence. With growing awareness by the public to recognize and report animal abuse, combined with increased attention by the media, prosecuting attorneys need the resources to properly address incidents of animal abuse in their community and properly hold offenders accountable.

Mission Statement

The mission of NCPAA is to always act in the best interests of animals; to create an environment in the criminal justice community where animal protection laws are fully enforced; to create understanding that when animals are safe from harm, communities are safer; to provide the resources, tools and support to prosecutors and allied professionals in the pursuit of those who harm animals; to collaborate with others so that the most updated and innovative information is available and accessible; to deliver training and technical assistance in a professional and ethical manner; and to remember that our victims are voiceless and deserve an impassioned and knowledgeable prosecutor pursuing justice in their name.

About the American Society for the Prevention of Cruelty to Animals

Founded in 1866, the ASPCA® (The American Society for the Prevention of Cruelty to Animals®) is the first animal welfare organization in North America and serves as the nation's leading voice for animals. More than two million supporters strong, the ASPCA's mission is to provide effective means for the prevention of cruelty to animals throughout the United States. As a 501(c)(3) not-for-profit corporation, the ASPCA is a national leader in the areas of anti-cruelty, community outreach and animal health services. For more information visit ASPCA.org.



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